

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JOHN MAXWELL MONTIN,

Plaintiff,

V.

**ESTATE OF DALE JOHNSON, BILL
ZINN, JESSIE RASMENSEN,
BARBRA RAMSEY, SCOTT ADAMS,
and BILL GIBSON,**

Defendants.

CASE NO. 4:07CV3271

MEMORANDUM AND ORDER

This matter is before the court on Plaintiff John Maxwell Montin's Motion for Leave to Proceed In Forma Pauperis ("IFP"). (Filing No. 2.) The court has received supporting financial information from Plaintiff. (*Id.*) Plaintiff is permitted to proceed IFP.

Pursuant to the Prison Litigation Reform Act, a prisoner plaintiff is required to pay the full amount of the court's \$350.00 filing fee by making monthly payments to the court, even if the prisoner is proceeding IFP. 28 U.S.C. § 1915(b). However, the term "prisoner" under the PLRA "means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." *Kolocotronis v. Morgan*, 247 F.3d 726, 728 (8th Cir. 2001)(citing 28 U.S.C. § 1915(h)). A person involuntarily committed as a mental patient, and not as a result of a criminal conviction, is not a "prisoner" for the purposes of the PLRA. *Id.*; see also *Jackson v. Johnson*, 475 F.3d 261, 266 (5th Cir. 2007); *Willis v. Smith*, No. C04-4012-MWB, 2005 WL 550528, *9 (N.D. Iowa 2005).

Plaintiff is housed at the Lincoln Regional Center pursuant to an order of the Hayes County, Nebraska, District Court after a finding that Plaintiff was not responsible for certain crimes by reason of insanity. (See Filing No. 5 at CM/ECF pp. 2, 5.) Therefore, Plaintiff is not a prisoner. Upon review of the record, Plaintiff's Motion for Leave to Proceed IFP is granted, and he is relieved from the payment of the filing fee in this matter.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion for Leave to Proceed In Forma Pauperis (Filing No. 2) is provisionally granted. Plaintiff shall not be required to pay the filing fee in this matter; and
2. The Clerk of the court is directed to send a copy of this Memorandum and Order to the appropriate officials at the Lincoln Regional Center.

DATED this 1st day of April, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge